

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2107

AN ACT

AMENDING SECTION 42-1125, ARIZONA REVISED STATUTES; RELATING TO INFORMATION TAX RETURNS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-1125, Arizona Revised Statutes, is amended to
3 read:

4 42-1125. Civil penalties: definition

5 A. If a taxpayer fails to make and file a return for a tax
6 administered pursuant to this article on or before the due date of the return
7 or the due date as extended by the department, then, unless it is shown that
8 the failure is due to reasonable cause and not due to wilful neglect, four
9 and one-half per cent of the tax required to be shown on such return shall be
10 added to the tax for each month or fraction of a month elapsing between the
11 due date of the return and the date on which it is filed. The total penalty
12 shall not exceed twenty-five per cent of the tax found to be remaining due.
13 The penalty so added to the tax is due and payable on notice and demand from
14 the department. For the purpose of computing the penalty imposed under this
15 subsection, the amount required to be shown as tax on a return shall be
16 reduced by the amount of any part of the tax which is paid on or before the
17 beginning of such month and by the amount of any credit against the tax which
18 may be claimed on the return. If the amount required to be shown as tax on a
19 return is less than the amount shown as tax on such return the penalty
20 described in this subsection shall be applied by substituting such lower
21 amount.

22 B. If a taxpayer fails or refuses to file a return on notice and
23 demand by the department, the taxpayer shall pay a penalty of twenty-five per
24 cent of the tax, which is due and payable on notice and demand by the
25 department, in addition to any penalty prescribed by subsection A of this
26 section, unless it is shown that the failure is due to reasonable cause and
27 not due to wilful neglect. This penalty is payable on notice and demand from
28 the department.

29 C. If a taxpayer fails or refuses to furnish any information requested
30 in writing by the department, the department may add a penalty of twenty-five
31 per cent of the amount of any deficiency tax assessed by the department
32 concerning the assessment of which the information was required, unless it is
33 shown that the failure is due to reasonable cause and not due to wilful
34 neglect.

35 D. If a person fails to pay the amount shown as tax on any return
36 within the time prescribed, a penalty of one-half of one per cent, not to
37 exceed a total of ten per cent, shall be added to the amount shown as tax for
38 each month or fraction of a month during which the failure continues, unless
39 it is shown that the failure is due to reasonable cause and not due to wilful
40 neglect. If the department determines that the person's failure to pay was
41 due to reasonable cause and not due to wilful neglect and that a payment
42 agreement pursuant to section 42-2057 is appropriate, the department shall
43 not impose the penalty unless the taxpayer fails to comply with the payment
44 agreement. If the taxpayer is also subject to a penalty under subsection A
45 of this section for the same tax period, the total penalties under subsection

1 A of this section and this subsection shall not exceed twenty-five per cent.
2 For the purpose of computing the penalty imposed under this subsection:

3 1. The amount shown as tax on a return shall be reduced by the amount
4 of any part of the tax that is paid on or before the beginning of that month
5 and by the amount of any credit against the tax that may be claimed on the
6 return.

7 2. If the amount shown as tax on a return is greater than the amount
8 required to be shown as tax on that return, the penalty shall be applied by
9 substituting the lower amount.

10 E. If a person fails to pay any amount required to be shown on any
11 return that is not so shown within twenty-one calendar days after the date of
12 notice and demand, a penalty of one-half of one per cent, not to exceed a
13 total of ten per cent, shall be added to the amount of tax for each month or
14 fraction of a month during which the failure continues, unless it is shown
15 that the failure is due to reasonable cause and not due to wilful neglect.
16 If the taxpayer is also subject to penalty under subsection A of this section
17 for the same tax period, the total penalties under subsection A of this
18 section and this subsection shall not exceed twenty-five per cent. For the
19 purpose of computing the penalty imposed under this subsection, any amount
20 required to be shown on any return shall be reduced by the amount of any part
21 of the tax that is paid on or before the beginning of that month and by the
22 amount of any credit against the tax that may be claimed on the return.

23 F. In the case of a deficiency, for which a determination is made of
24 an additional amount due, which is due to negligence but without intent to
25 defraud, the person shall pay a penalty of ten per cent of the amount of the
26 deficiency.

27 G. If part of a deficiency is due to fraud with intent to evade tax,
28 fifty per cent of the total amount of the tax, in addition to the deficiency,
29 interest and other penalties provided in this section, shall be assessed,
30 collected and paid as if it were a deficiency.

31 H. If the amount, whether determined by the department or the
32 taxpayer, required to be withheld by the employer pursuant to title 43,
33 chapter 4 is not paid to the department on or before the date prescribed for
34 its remittance, the department may add a penalty of twenty-five per cent of
35 the amount required to be withheld and paid, unless it is shown that the
36 failure is due to reasonable cause and not due to wilful neglect.

37 I. A person who, with or without intent to evade any requirement of
38 this article or any lawful administrative rule of the department of revenue
39 under this article, fails to file a return or to supply information required
40 under this article or who, with or without such intent, makes, prepares,
41 renders, signs or verifies a false or fraudulent return or statement or
42 supplies false or fraudulent information shall pay a penalty of not more than
43 one thousand dollars. This penalty shall be recovered by the department of
44 law in the name of this state by an action in any court of competent
45 jurisdiction.

1 J. If the taxpayer files what purports to be a return of any tax
2 administered pursuant to this article but which is frivolous or which is made
3 with the intent to delay or impede the administration of the tax laws, that
4 person shall pay a penalty of five hundred dollars.

5 K. If a taxpayer who is required to file or provide an information
6 return under this title or title 43 fails to file the return at the
7 prescribed time or files a return which fails to show the information
8 required, that taxpayer shall pay a penalty of ~~five~~ ONE hundred dollars **FOR**
EACH MONTH OR FRACTION OF A MONTH DURING WHICH THE FAILURE CONTINUES unless
9 it is shown that the failure is due to reasonable cause and not due to wilful
10 neglect. **THE TOTAL PENALTIES UNDER THIS SUBSECTION SHALL NOT EXCEED FIVE**
11 **HUNDRED DOLLARS.**

12 L. If it appears to the superior court that proceedings before it have
13 been instituted or maintained by a taxpayer primarily for delay or that the
14 taxpayer's position is frivolous or groundless, the court may award damages
15 in an amount not to exceed one thousand dollars to this state. Damages so
16 awarded shall be collected as a part of the tax.

17 M. A person who is required under section 43-413 to furnish a
18 statement to an employee and who wilfully furnishes a false or fraudulent
19 statement, or who wilfully fails to furnish a statement required by section
20 43-413, is for each such failure subject to a penalty of fifty dollars.

21 N. A person who is required to collect or truthfully account for and
22 pay a tax administered pursuant to this article, including any luxury
23 privilege tax, and who wilfully fails to collect the tax or truthfully
24 account for and pay the tax, or wilfully attempts in any manner to evade or
25 defeat the tax or its payment, is, in addition to other penalties provided by
26 law, liable for a penalty equal to the total amount of the tax evaded, not
27 collected or not accounted for and paid. Except as provided in subsections
28 S, T and U of this section, no other penalty under this section relating to
29 failure to pay tax may be imposed for any offense to which this subsection
30 applies.

31 O. Unless due to reasonable cause and not to wilful neglect:
32 1. A person who fails to provide ~~his~~ **THAT PERSON'S** taxpayer
33 identification number in any return, statement or other document as required
34 by section 42-1105, subsection A shall pay a penalty of five dollars for each
35 such failure.

36 2. A person, when filing any return, statement or other document for
37 compensation on behalf of a taxpayer, who fails to include that person's own
38 taxpayer identification number and the taxpayer's identification number shall
39 pay a penalty of fifty dollars for each such failure.

40 3. A person, when filing any return, statement or other document
41 without compensation on behalf of a taxpayer, who fails to include that
42 person's own taxpayer identification number and the taxpayer's identification
43 number is not subject to a penalty.

1 No other penalty under this section may be imposed if the only violation is
2 failure to provide taxpayer identification numbers.

3 P. If a taxpayer fails to pay the full amount of estimated tax
4 required by title 43, chapter 5, article 6, a penalty is assessed equal to
5 the amount of interest that would otherwise accrue under section 42-1123 on
6 the amount not paid for the period of nonpayment, not exceeding ten per cent
7 of the amount not paid. The penalty prescribed by this subsection is in lieu
8 of any other penalty otherwise prescribed by this section and in lieu of
9 interest prescribed by section 42-1123.

10 Q. The department of law, with the consent of the department of
11 revenue, may compromise any penalty for which it may bring an action under
12 this section.

13 R. Penalties shall not be assessed under subsection D of this section
14 on additional amounts of tax paid by a taxpayer at the time the taxpayer
15 voluntarily files an amended return. This subsection does not apply if:

16 1. The taxpayer is under audit by the department.

17 2. The amended return was filed on demand or request by the
18 department.

19 3. The total additional tax paid and due for the tax period represents
20 a substantial understatement of tax liability. For the purposes of this
21 paragraph, there is a substantial understatement of tax for any tax period if
22 the amount of the understatement for the tax period exceeds the greater of
23 ten per cent of the actual tax liability for the tax period or two thousand
24 dollars.

25 S. In addition to other penalties provided by law, a person who
26 knowingly and intentionally does not comply with any requirement under
27 chapter 3, article 5 of this title relating to cigarettes shall pay a penalty
28 of one thousand dollars. A person who knowingly and intentionally does not
29 pay any luxury tax that relates to cigarettes imposed by chapter 3 of this
30 title shall pay a penalty that is equal to ten per cent of the amount of the
31 unpaid tax.

32 T. A cigarette manufacturer, cigarette importer or cigarette
33 distributor, as defined in section 42-3001, who knowingly and intentionally
34 sells or possesses cigarettes with false manufacturing labels or cigarettes
35 with counterfeit tax stamps, or who obtains cigarettes through the use of a
36 counterfeit license, shall pay the following penalties:

37 1. For a first violation involving two thousand or more cigarettes,
38 one thousand dollars.

39 2. For a subsequent violation involving two thousand or more
40 cigarettes, five thousand dollars.

41 U. The civil penalties in this section are in addition to any civil
42 penalty under chapter 3, article 5 of this title.

43 V. For the purposes of this section, and only as applied to the taxes
44 imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2 and 3
45 of this title, "reasonable cause" means a reasonable basis for the taxpayer

1 to believe that the tax did not apply to the business activity or the
2 storage, use or consumption of the taxpayer's tangible personal property in
3 this state.

4 Sec. 2. Effective date

5 This act is effective, and applies to information returns that are
6 required to be filed, from and after December 31, 2008.